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(1)

Supreme Court, U.S.
FILED

SEP 17 2010

OFFICE OF THE CLERK

No. 10-394

IN THE

SUPREME COURT OF THE UNITED STATES

GEOFFREY WILLARD ATWELL,
PETITIONER

vs.

THOMAS F. LAVAN, et al., RESPONDENTS

ON PETITION FOR WRIT OF CERTIOIRARI TO

THE UNITED STATES COURT OF APPLEALS
FOR THE THIRD CIRCUIT

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

I. As **Petitioner** was convicted of violations of **Commonwealth of Pennsylvania** criminal statutes on different dates and was consecutively sentenced for each set of those convictions on different calendar dates, does the **Commonwealth's Consecutive Sentencing Statute** violate **Petitioner's U.S.C.A Civil Rights** when those consecutive sentences are sub-sequentially applied and administered as a consecutive single sentence with minimums and maximums each totaled that ultimately increase **Petitioner's** total imprisonment time versus the sentencing imposed upon different dates and when **Petitioner** began serving the first sentence before subsequent consecutive sentences were imposed?

II. Are all **Respondents' involved with** administrating those **consecutive sentences** liable for the violation of **Petitioner's U.S.C.A. Civil Rights** when **Petitioner** is illegally incarcerated and when each Respondent, who had the ability to institute an inquiry into **Petitioner's** claims as each **Respondent** was involved in administering **Petitioner's** incarceration, acquiesced and/or refused to answer **Petitioner's** sentencing reasons to each **Respondent**?

## LIST OF PARTIES

All **Parties** do not appear in the **Caption** of this case on the Cover Page and therefore, below is a list of all **Parties** to the proceedings in the **Court** where **Judgment** is the subject of this **Petition**:

1. **Thomas Lavan**
2. **Edward G. Rendell**
3. **Mark S. Schweiker**
4. **Jeffery A. Beard**
5. **Thomas L. James**
6. **Sharon M. Burks**
7. **Sarah Hart**
8. **Randy Sears**
9. **Donald Kelchner**
10. **Michael J. Kazor**
11. **Charles Marsella**
12. **Krista J. Griffith**
13. **Rex P. Hildebrand**
14. **Lee T. Bernard**
15. **John S. Shaffer**
16. **Michael Farnan**
17. **Mike Fisher**
18. **Mark Bergstrom**
19. **Thomas W. Corbett, Jr.**
20. **Robert A. Greevy**
21. **James O. Thomas, Jr.**
22. **Chuck Roberts**
23. **James J.McGrady**
24. **Robert Faneck**
25. **Georgine Leachy**
26. **C. Zaledonis**
27. **Kenneth Burnett**
28. **Chris Putnam**
29. **Richard Keller**
30. **W. C. West**
31. **Daniel Tucker**
32. **D. J. Smith**
33. **Dave Morris**
34. **Theodore Higgins**
35. **Stanley Bohinski**
36. **R. Stanish**
37. **Scott Thomas**
38. **Sgt. Harrison**
39. **Patricia Ginocchetti**
40. **J. Doknovitch**
41. **Patricia Blizzard**
42. **Eric Myers**
43. **Sheri Gaughan**

## LISST OF PARTIES (cont'd.)

44. **Tom Dougherty**
45. **Benjamin A. Martinez**
46. **Sean R. Ryan**
47. **Prison Guard McCrone**
48. **Kathleen Zwierzyna**
49. **Judith B. Selvey**
50. **James Gardner Collins**
51. **Gregory R. Newhauser**
52. **R. Douglas Sherman**
53. **Sgt. Dietrich**

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**IN THE**

**SUPREME COURT OF THE UNITED STATES**

**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully requests that this Court issue a Writ of Certiorari to review the below judgment:

## OPNIONS BELOW

1. The Opinion of the United States Court of Appeals for the Third Circuit appears at Appendix D. to this Petition and is neither non-precedential nor published.

2. The Memorandums and Orders of the United State District Court for the Middle District of Pennsylvania appear at Appendices F. and G. are unpublished.

## JURISDICTION

The date on which the United States Court of Appeals for the Third Circuit filed their decision on my case was February 19, 2010.

A timely Petition for Rehearing En Banc was denied by the United States Court of Appeals for the Third District on April 20, 2010 and a copy of the filing denying rehearing appears at Appendix B.

Petitioner requested an extension of time to file a Petition for Writ of Certiorari for this case and was granted an extension for filing to and including September 17, 2010 and a copy of that letter appears at Appendix A.

The Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 . (1).

## CONSTITUTIONAL AND STATUTAORY PROVISIONS INVOLVED

1. **USCA Amendment 5**
...nor should any person.....be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

II. **USCA Amendment 8**
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments be inflicted.

III. **USCA Amendment 14, Section 1.**
All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of Life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

## STATEMENT OF THE CASE

1. **Petitioner** was consecutively sentenced for violations of Commonwealth of Pennsylvania Title 18 Criminal Statutes beginning November, 1998, with credits back to June, 1998 (Appendices H., Nos. 1.-6.) and was unconditionally discharged May 22, 2004 and **Petitioner** filed an **Amended 42 U.S.C Section 1983 Civil Rights Complaint** January 20, 2004, that was docketed as **1-CV: 03-01728, as Petitioner** had determined, based upon the records of **Petitioner's,** available in his own prison file, that **Petitioner's** sentencing should have been completed May 22, 2002 (upon completion of discovery for this action, **Petitioner** modified his calculations for the completion of his sentencing as October 19, 2002) and **Petitioner's Civil Action Complaint** charged that **Petitioner's Liberty Interest** was denied October 19, 2002 to May 22, 2004 and in violation of **Petitioner's 5th, 8th and 14th USCA Constitutional Amendment Rights.** (**Petitioner** also sued for violation of his 1st **USCA Amendment** Rights but the lower **Federal** Courts eliminated that portion of the **Action** and **Petitioner's Questions Presented No. II.** addresses this area.)

2. **Petitioner's Complaint** stems from his calculation for his sentences based upon sentences

received, **Appendix H., Nos. 1.-6.**, and Pennsylvania sentencing statute **42 Pa. C.S.A. Section 9757, Appendix I.** However, Pennsylvania Department of Corrections (**D.O.C.**) personnel and Commonwealth Officials concerned with serving of Pennsylvania 51st Judicial District Court of Common Pleas of Adams County sentencing for violations of Pennsylvania criminal statutes acquiesced and/or refused to respond to **Petitioner's** written and verbal requests that he was being held in SCI Dallas longer than he was sentenced.

3. Petitioner's **Civil Action** circumstances have been presented to both the **Middle District Court** and **Third Circuit Court** but to no avail as those **Courts'** have not addressed **Petitioner's** claims of denial of **Liberty Interest** and that **Interest** concerns **Petitioner's Liberty** to obtain **freedom from restraint, ability to secure his own medical services and research his own court information. Petitioner** has a **Petition for Writ of Certiorari** now before this **Court, Atwell v. Schweiker, Docket Number 09-1462** that pertains to this **Action's** circumstances and has previously submitted several **Petitions for Write of Certiorari** to this **Court** that are all related to the subject of this **Petition; Atwell v. Commonwealth, 173 L. Ed. 2d 579 (2009); Atwell v. Commonwealth, 164 L. Ed. 2d 72 & 514 (2005)** and **Atwell v. Dean, et al., 168 L. Ed. 2d 710 & 798**, all either denied or dismissed.

## REASONS FOR GRANTING THE WRIT

1. **Petitioner** filed a **42 U.S.C. Section 1983 Civil Action Complaint**, as amended January 20, 2004 pursuant the **United States District Court for the Middle District of Pennsylvania (Middle District Court)** requirement, complaining of being denied his **U.S.C.A. A. 5** and **A. 14** rights, with cruel and unusual punishment being inflicted in violation of **U.S.C.A. A. 8**, as **Petitioner's** liberty interest of freedom from confinement and freedom to chose his legal sources for court and desired medical services was denied by illegal confinement by **Respondents'**. **Petitioner's Civil Action** was filed in the **Middle District Court** January 20, 2004 and docketed as **1:CV03-01728.**

2. **Petitioner**, prior to his unconditional discharge from **Pennsylvania Department of Corrections (Pa DOC)** at State Correctional Institution Dallas (SCI Dallas), contacted all **Respondents** via written and/or verbal communications concerning **Petitioner's** complaint of being illegally incarcerated beyond the length of judicially imposed sentencing, as imposed by the **51st Judicial District Court of Common Please of Adams County, PA** {Appendix H. ( Nos. 1.-6.)}, and each **Respondent** refused to answer and/or acquiesced. **Petitioner** initially

complained of not being released on May 22, 2002 (subsequently modified to October 19, 2002 after **Petitioner** received a copy of his sentencing orders [Appendix H.] through Discovery for this **Action**.) and when **Petitioner** was unconditionally discharged May 22, 2004.

3. **Petitioner** charges all **Respondents**, including operational and medical personnel involved with his illegal prison confinement at SCI Dallas, with violations of **Petitioner's U.S.C.A. 5th, 8th and 14th Amendment Rights** as **Petitioner** was deprived of his liberty interest without due process of law, per **Baker v. McCallum,** 443 U.S. 137 (1979) and, pursuant **Petitioner's Questions Presented No. II, Petitioner** considers deprivation of liberty, in violation of the **5th** and **14th Amendments**, also as deprivation of liberty to not be able to obtain his desired legal matters for court and desired medical services as those **Amendments** allow and therefore, **Petitioner** does not agree with the lower Courts' submittals other than stating that he only claimed denial of liberty. **Petitioner** has a right to be free from wrongful restraint of his liberty per **Jones v. Cunningham**, 371 U.S. 236 (1967).

4. **Petitioner's Action** is post trial as

**Petitioner** does not challenge imposed sentencing but challenges **Respondents'** denial of his liberty interest effective October 19, 2002 and **Petitioner** requested **Respondents'** to justify their continued incarceration of **Petitioner** since October 19, 2002 as per **Peyton v. Rowe**, 391 U.S. 54 (1968) but, each **Respondent** refused and/or acquiesced and **Petitioner** considers that his filed **Pa DOC** grievance and contact with **Respondents'** exhausted his Administrative Remedies.

5. Before **Petitioner** cites his disagreement areas with **Appellate** and **District Court** decisions, **Petitioner** presents below his **Adams County Court of Common Please Sentencing** with sentence number, length, starting date and ending date [Appendix H. (Nos. 1.-6.)]:

| . | Sent. No. | Length | Start | End |
|---|---|---|---|---|
| A. | 687-98 | 180 Days | 10/20/98 | 4/18/99 |
| B. | 522-99 | 3-23 ms. | 4/18/99 | 3/18/01 |
| C. | Paroled 522-99 245-98 458-98 | 10 ms., 23 d | 4//19/00 | 3/20/01 |
| D. | 245-98* | 1-12 ms. | 7/18/99 | 7/18/00 |
| E. | 458-98** | 16-36 ms. | 8/18/99 | 8/18/02 |
| F. | 754-98*** | 1-12 ms. | 4/19/00 | 4/19/01 |
| G. | 97-99 | 6-24 ms. | 4/19/00 | 4/19/02 |
| H. | 1050-99 | 6-24 ms. | 10/19/00 | 10/19/02 |
| I. | 706-00 | 3-18 ms. | 4/19/01 | 10/19/02 |

* **38 days credit on this sentence**

** **24 days credit on this sentence**

*** **Paroled April 20, 2000, effective April 19, 2000, on 522-99, 245-98 and 458-98 and pursuant Commonwealth of Pennsylvania law, parole on criminal sentences can only Be granted after the minimum(s) is (are) served and thusly, a new minimum starts and since 754-98 and 97-99 run concurrently, both sentence minimums began on same date and sentences F.-I. above were all served at SCI Dallas.**

As detailed above, **Petitioner** shows, pursuant Appendix H. (Nos. 1.-6.), that he completed his maximum sentencing on October 19, 2002 and that continued incarceration to May 22, 2004 was illegal. Pursuant Pennsylvania sentencing statute **42, Pa. C.S.A. Section 9757** (Appendix I.), minimums are not to be less than one-half of maximums and this feature pertains to each sentence of **Petitioner's** sentences (Appendix H. (Nos. 1.-6.). Also, all of **Petitioner's** minimum sentences total 36 months plus 180 days and his maximum sentences total 149 months plus 180 days and those sentences comply with **42 Pa. C.S.A. Section 9757** (id). However, **Petitioner** served sentences A., B, D. and E. above at Adams County Prison and only sentences F., G., H. and I. were served at Pa DOC SCI Dallas. **THIS IS WHERE RESPONDENTS' APPLIED 42 Pa. C.S.A. SECTION 9757 (id) INCORRECTLY!**

6. The total minimums for sentences F., G., H.

and I. are 16 months and the total maximums for those sentences are 78 months and **Respondents'** applied the wrong Pennsylvania sentencing statute! Pennsylvania Consecutive Sentencing Statute **42 Pa. C.S.A. Section 9757** (id) was enacted in 1974 and amended in 1980 for actual use and, this Statute replaced Consecutive Sentencing Statute **19 P.S. Section 897** (Appendix J.); which totaled minimums and totaled maximums, and this was for purposes of determining a prisoner's parole eligibility as a prisoner had to petition for parole after completion of each minimum, and the concept of constructive parole was not promulgated. **Petitioner charges that Respondents' followed the concept of 19 P.S. Section 897** (id) **in that Respondents' followed the consecutive concept and did not apply maximums until after all minimums were completed and Respondents' then totaled all maximums as the maximum sentence. Petitioner charges that Respondents' altered Petitioner's sentencing from October 19, 2002 to May 22, 2004 that increased the imposed sentences of the 51st Judicial Court of Common Please of Adams County and this violates Amendments 5, 8 and 14 of the United States Constitution. Petitioner** charges that **Respondents'** denied **Petitioner's**

liberty freedom of capabilities to obtain his desired legal court and medical services, in addition to denial of liberty freedom from illegal restraint. And, **Petitioner** references **PA ex rel .Craig v. Maroney,** 348 F.2d 22, 33 CA3 (PA) 1965, cert. den. 384 U.S. 1019 (1966); In re Ernst, 294 F.2d 556, 561-2, CA3 (1961), cert. den. 368 U.S. 917 (1961); **DeShaney v. Winnebago County Dept. of Soc. Services,** 489 U.S. 189 (1988) and **County of Sacramento v. Lewis**, 523 U.S. 833 (1997). Also, liberty extends beyond free from physical restraint per **Michael H., et al. v. Gerald D.**, 491 U.S. 110 (1988).

7. Regarding the **Third Circuit Court's Opinion** filed February 19, 2010 (Appendix D.), **Petitioner** comments as follows:

A. Regarding affirmation of granting motion for summary judgment for medical defendants, **Petitioner** references comments in his foregoing Nos. 1., 3. and 6. and cites that denial of his liberty freedom to select his own medical services and have desired services that the medical defendants' refused to provide and states that this denial of liberty freedom is denial of **5th** and **14th Amendments** and **Petitioner** addresses this issue above.

B. **Respondents'** cannot aggregate

**Petitioner's** consecutive sentences pursuant replaced Statue **19 P.S. Section 897** (supra) so that aggregation increases sentencing beyond that imposed [Appendix H. (nos. 1.-6.), supra and No. **5.** above] and **Petitioner** claims that his imposed sentences comply with **42 Pa. C.S.A. Section 9757**, supra, and that aggregating pursuant **19 P.S. Section 897**, supra, is incorrect in that that Statute was replaced with **42 Pa. C.S.A. Section 9757**, supra, and that **Respondents'** method of aggregation of maximum sentences violated the **5th, 8th** and **14th Amendments** of **Petitioner** and is also contrary to **42 Pa. C.S.A. Section 9757**, supra, in that that Statute does not employ the word "Aggregation" and **Petitioner** charges that Pennsylvania **Commonwealth Court** decisions are error. **Third Circuit's** FN 4 does not explain that Constructive Parole commences after minimums and, after one minimum is completed, the next minimum sentence begins but, the sentence of the first minimum continues until maximum is served via imprisonment and/or parole and the next sentences begin after completion of the previous sentence minimum and maximums continue, etc., etc., etc. Therefore, the **Middle District Court's grant of summary judgment is error.**

**Petitioner's** grievance and letters and verbal communications to **Respondents** complies with exhaustion of administrative remedies.

8. Regarding the **Middle District Court's** grants of summary judgment, **Petitioner's** comments in above **7. A., B. and C.** applies.

9. **Petitioner** references his **United States Supreme Court Docket No. 09-1462** (three copies were provided Mr. Hopkirk of the Pennsylvania Attorney General's office.) as that **Docket's** comments by Petitioner pertain here also. (**Petitioner** notes that in that **Docket Petition**, his Appendix E., No. 3. pages 2.-4. are misplaced and should be part of Appendix E., page 1. and that Appendix E., No. 4., page 2. is the second page of Appendix E., No. 3. and also, **Petitioner** notes that the **Middle District Court Docket No. 1:CV06-1048** is used when the correct **Docket No. of CA3 is 09-2329**.).

10. Under the continuing violation theory, a new claim occurs each day violation is extant and continuing violation applies when conduct is on-going rather than a single event, as was each day of **Petitioner's** illegal incarceration from October 19, 2002 to May 22, 2004, per **Interamericas Investments, Ltd. V. Board of Governors of the Federal Reserve System**, 111 F.3d 376, CA5 (1997).

11. **Petitioner** cites that **Respondents'** held **Petitioner** at SCI Dallas after October 19, 2002 to May 22, 2004 without a Commonwealth of Pennsylvania conviction and/or sentence and **Petitioner** references his **Third Circuit Court** submittal served January 28, 2009, Nos. III. C. and D. on pps. 7.-14. of 18. and all Appendices of that submittal.

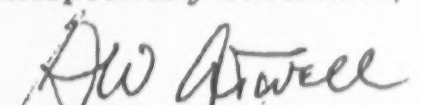
## CONCLUSION

Decisions by the **Third Circuit Court** and **Middle District Court for this Civil Action** do not consider **Pennsylvania** statutes as submitted with this **Petition**, Appendices I. and J., and **Respondents'** did not properly apply the Consecutive Sentencing Statute of Appendix I. but used the concept of Appendix J. for which **Petitioner's** sentences of Appendices F., G., H. and I. were increased versus sentencing imposed and after **Petitioner** commenced his sentencing of Appendix A. and that clearly violates **Petitioner's 5th, 8th and 14th Amendment Constitutional Rights.**

All **Respondents'** are liable pursuant **Petitioner's** foregoing reasons and per Appendix H., Nos. 1.-6. **Petitioner** proves that his maximum discharge date was October 19, 2002 and **Petitioner's Liberty Interests** were denied him and that illegal confinement caused a cruel and unusual [punishment.

**Petitioner** respectfully requests that this **Court** grant **Certiorari** for this **Action.**

Respectfully Submitted,



**Geoffrey Willard Atwell,**
**Pro Se Petitioner**